

## REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed September 5, 2008. At the time of the Final Office Action, Claims 15-18 and 21-31 were pending and were rejected in this Application. Claims 15, 21, and 29 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

### **Rejections under 35 U.S.C. §103**

Claims 21-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,674,224 issued to Howell et al. ("Howell") in view of U.S. Patent No. 6,499,486 issued to Chervitz et al. ("Chervitz").

Claims 15-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chervitz in view of U.S. Patent No. 6,306,138 issued to Clark et al. ("Clark"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

When determining whether a claim is obvious, the Examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Further, it is well settled that obviousness requires at least a suggestion of all the features in a claim. *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*" *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

With regard to claim 15, neither Chervitz nor Clark at least suggest forming an enclosed recess in an opposite wall of the femoral tunnel, and embedding the nose of a transverse suspension device into that enclosed recess, as is now recited by amended claim 15. Therefore, the cited references, alone or in combination, do not at least suggest all of the elements of amended claim 15

and cannot render obvious claim 15 as amended. For at least these reasons, Applicants submit that claim 15 is in condition for allowance and request withdrawal of the rejection.

Claims 16-18 depend directly or indirectly from claim 15. Applicants hereby repeat and incorporate the above comments with regard to amended claim 15. For at least these reasons, Applicants submit that claims 16-18 are in condition for allowance and request withdrawal of the rejection.

With regard to claims 21 and 29, neither Howell nor Chervitz at least suggest embedding the nose section of a transverse suspension device into an enclosed recess formed in the opposite wall of the femoral tunnel, as is now recited by amended claims 21 and 29. Therefore, the cited references, alone or in combination, do not at least suggest all of the elements of amended claims 21 and 29 and cannot render obvious claims 21 and 29 as amended. For at least these reasons, Applicants submit that claims 21 and 29 are in condition for allowance and request withdrawal of the rejection.

Claims 22-28 and 30-31 depend directly or indirectly from claim 21. Applicants hereby repeat and incorporate the above comments with regard to amended claim 21. For at least these reasons, Applicants submit that claims 22-28 and 30-31 are in condition for allowance and request withdrawal of the rejection.

#### **Request for Continued Examination (RCE)**

Applicant encloses a Request for Continued Examination (RCE) Transmittal, and hereby authorized the Commissioner to charge \$810 to Deposit Account No. 50-0359 of ArthroCare Corporation.

#### **Information Disclosure Statement**

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner's review and consideration.

## CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

The Commissioner is hereby authorized to charge \$810 for the RCE to Deposit Account No. 50-0359 of ArthroCare Corporation. Applicant believes there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.358.5925.

Respectfully submitted  
Attorney for Applicants,



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Date: 12/4/08

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Enclosure: 1) Information Disclosure Statement and PTO Form 1449, with copies of the references.